

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Melvin H. Spivey property

DEPARTMENT: County Attorney's Office

DIVISION: Litigation

AUTHORIZED BY: Lola Pfeil

CONTACT: Sharon Sharrer

EXT: 7257

MOTION/RECOMMENDATION:

Melvin H. Spivey property. Approval of a proposed negotiated settlement relating to Parcel Numbers 106/706 of the County Road 15 road improvement project. The proposed settlement is at the total sum of \$231,757.16 inclusive of all compensation to the owner, attorney fees of any kind, all costs, interest and any other matter for which Seminole County might be obligated to pay relating to these parcels. Judge Galluzzo.

District 5 Brenda Carey

Bob McMillan

BACKGROUND:

see attached

STAFF RECOMMENDATION:

Staff recommends the Board approve the proposed negotiated settlement relating to Parcel Numbers 106/706 of the County Road 15 road improvement project. The proposed settlement is at the total sum of \$231,757.16 inclusive of all compensation to the owner, attorney fees of any kind, all costs, interest and any other matter for which Seminole County might be obligated to pay relating to these parcels.

ATTACHMENTS:

1. Melvin H. Spivey property

Additionally Reviewed By: No additional reviews



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: Matthew G. Minter, Deputy County Attorney *Matthew G. Minter*

FROM: David G. Shields, Assistant County Attorney *David G. Shields*
Ext. 5736

CONCUR: Pam Hastings, Administrative Manager/Public Works Department
David Nichols, Principal Engineer/Engineering Division *DN 4-30-08*

DATE: April 30, 2008

RE: Settlement Authorization
County Road 15
Parcel Nos. 106/706; Melvin H. Spivey
Seminole County v. Seminole Co. State Road 46, Ltd., et al.
Case No. 2007-CA-1605-101C-13-L

This memorandum requests settlement authorization by the Board of County Commissioners (BCC) for Parcel Nos. 106/706 on the County Road 15 ("C15") road improvement project. The recommended settlement is at the total sum of \$231,757.16 inclusive of all compensation to the owner, attorney fees of any kind, all costs, interest and any other matter for which Seminole County might be obligated to pay in the referenced case allocated as follows:

\$180,000.00	land, improvements, severance damages, and statutory interest
\$ 31,069.50	statutory attorney's fees; and
\$ 20,687.66	costs.

I. THE PROPERTY:

A. Location Data

The subject property is located at the northeast corner of C15 (Monroe Road) and Palm Terrace within unincorporated Seminole County, Florida. A location map is attached as Exhibit A.

B. Property Address

The street address is 195 Monroe Road, Sanford, FL 32771-6519. A parcel sketch is attached as Exhibit B.

II AUTHORITY TO ACQUIRE.

The BCC adopted Resolution No. 2007-R-71 on April 10, 2007, authorizing the acquisition of Parcel Nos. 106/706. The C15 road improvement project was found to be necessary and serving a public purpose and in the best interests of the citizens of Seminole County. The Order of Take occurred on August 13, 2007, with title vesting in Seminole County on August 21, 2007, the date of the good faith deposit in the amount of \$148,000.00 for the referenced parcels as agreed to by the parties.

III ACQUISITIONS AND REMAINDER

The acquisition of Parcel No. 106 is 2,715 square feet in fee simple. The acquisition of this parcel will leave a remainder of 24,568 square feet from a parent tract of 27,283 square feet. The fee taking is an irregular shaped piece of land that will be taking from the property's frontage on C15.

The acquisition of Parcel No. 706 is a 148-square foot temporary construction easement (TCE) that will be used to blend the new right-of-way with the access driveway on the remainder. The TCE is also irregular in shape and is located on the west boundary of the subject property.

The property is improved with a single family residence. The new right-of-way is located two feet from the front of the house. The owner, Mr. Spivey, built the house and has lived there for over 50 years. He is now elderly and a widower, has difficulty seeing, and now lives there alone.

IV APPRAISED VALUES

The County's original report dated July 5, 2006, was prepared by Florida Realty Analysts, Inc., and reported full compensation to be \$62,000.00 for Parcel No. 106 and \$700.00 for Parcel No. 107. The updated report dated July 18, 2007, opines the same value. The County's appraisal based the value on converting the residence to an office as the highest and best use of the property.

The owner did not have an appraisal report prepared, but did employ experts to analyze the County's appraisal report and provide support in the amount of compensation the owner should receive from the County for the taking.

V BINDING OFFER/NEGOTIATION

The County's initial written offer for the parcels was \$85,850.00, exclusive of costs and fees. After the initial offer, the County learned that Mr. Spivey wanted to move his house from the front toward the back of the property and the \$148,000.00 was his initial estimate for this move. The County thus made a good faith deposit of \$148,000.00 in recognition of the owner's unique circumstances including his age, his disabilities, the decades he has lived in the house, the fact that he built the house and his apparent personal need to remain in the house. Given all of the circumstances it was thought that moving the house to the rear of the lot would allow him to stay and satisfactorily address these personal needs. Moreover, it seemed that a jury would be very sympathetic to Mr. Spivey, his situation and his desire to live out his remaining days in the same house in which he had lived for the last half century.

Following the order of taking, the owner made a demand of \$228,323.00 exclusive of statutory attorney's fees and expert costs. The higher amount included damages and compensation beyond the cost of the move. The County made a counteroffer at \$160,000.00, exclusive and the owner responded at \$200,000.00, exclusive. Through further negotiations the parties agreed to \$180,000.00 for the owner's final compensation, exclusive of attorney fees and costs.

VI ATTORNEY'S FEES AND COSTS

A. Attorney's Fees. The statutory attorney's fee reimbursement totals \$31,069.50. The sum is statutorily computed based upon a settlement sum of \$180,000.00 less a first written offer of \$85,850.00 to produce a benefit of \$94,150.00.

B. Expert's Fees/Costs. The owner's claimed costs of \$20,687.66 for experts' fees and costs are reasonable for the referenced parcels. The break down is as follows:

\$7,085.00	Appraiser
\$8,575.00	Contractor (to estimate the direct indirect and incidental costs of moving the house)
\$4,777.66	Traffic Engineer; and
\$ 250.00	Building mover (to prepare a quote for the direct cost of moving the house.)

VII COST AVOIDANCE

The County's offer of \$148,000.00 at the time of the good faith deposit was based on Mr. Spivey moving his house instead of converting it to an office as suggested by the County's appraiser. As discussed previously, it seemed highly possible that a jury would be very sympathetic to Mr. Spivey's situation and would award him at least the amount needed to move his house. The difference between the County's good faith

deposit of \$148,000.00 and the owners' estimated value of \$228,323.00 is \$80,323.00. Although the owner did not perform a full appraisal, the owner's methodology was reasonable for negotiation purposes. Both sides appeared to have attempted to arrive at a fair valuation. When faced with two reasonable but conflicting appraisals, juries tend to reach a verdict in the middle. The proposed settlement of \$180,000.00 is less than the \$188,161.15 midpoint between each side's starting values and is reasonable under the circumstances of these parcels.

By this settlement, the County avoids all additional costs associated with litigation. In the absence of settlement, the expert costs alone would likely be at least \$15,000.00 - \$20,000.00 higher.

VIII RECOMMENDATION

County staff recommends that the BCC approve this negotiated settlement in the total sum of \$231,757.16, inclusive of all compensation to the owner, attorney fees of any kind, all costs, interest and any other matter for which Seminole County might be obligated to pay relating to this parcels.

DGS/dre

Two (2) Attachments:

Exhibit A - Location Map

Exhibit B – Sketch

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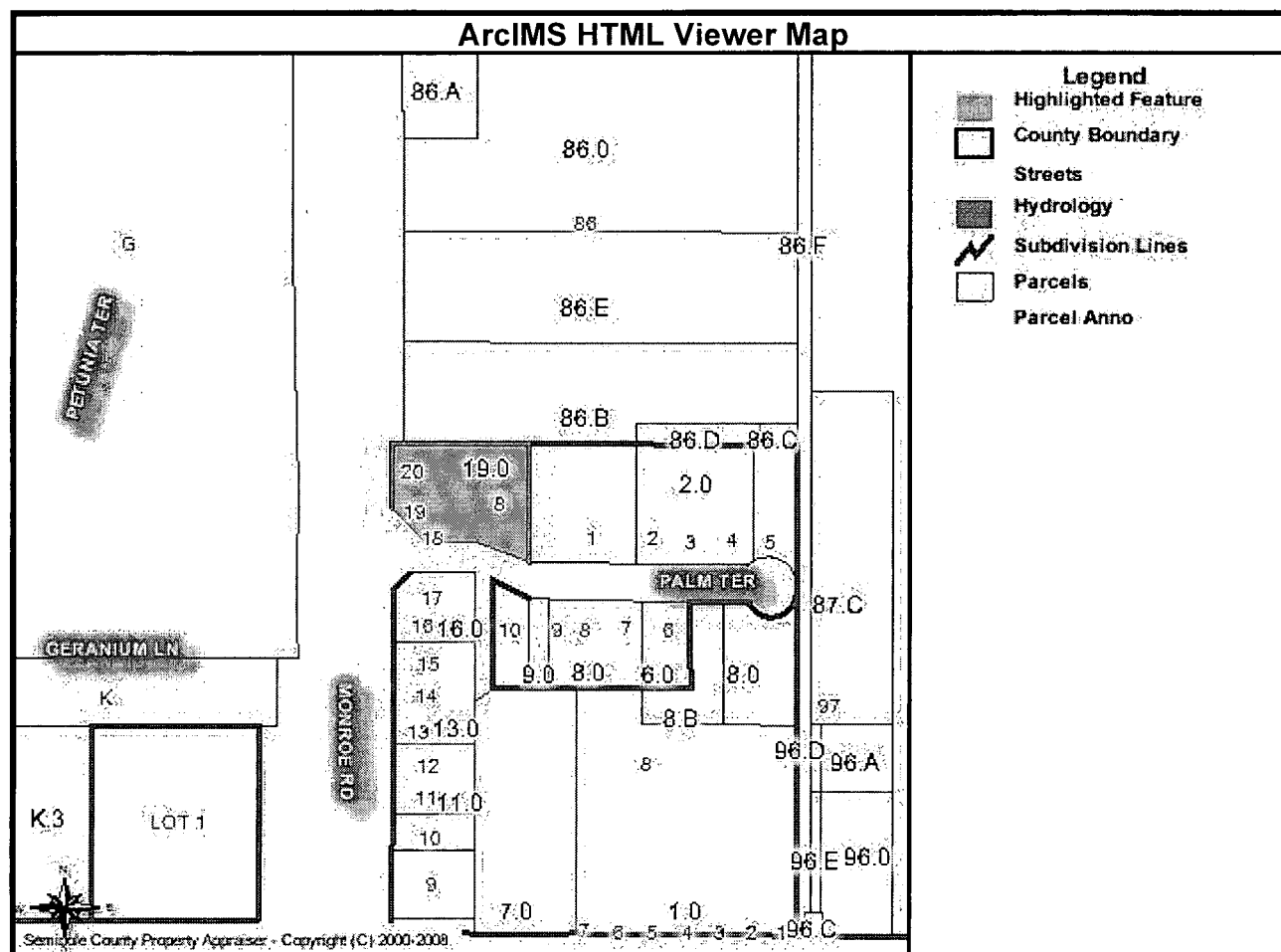


EXHIBIT B

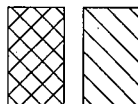


PARENT TRACT (27,283 SF) 0.626 AC
 AREA OF TAKE (2,715 SF) 0.062 AC
 AREA OF TCE (148 SF) 0.003 AC
 REMAINDER TRACT (24,568 SF) 0.564 AC

PROPERTY LINE

AREA OF TAKE (PARCEL 106)

AREA OF TCE (PARCEL 706)



PARENT TRACT : WITH TAKING SHOWN

PARCEL 106/706
 C.R. 15 / MONROE ROAD
 SEMINOLE CO., FLORIDA

BLDG. EOP SETBACK	FHP	8/24/06
SCALE	AS SHOWN	
DRAWN	FHP	APPROVED
CHECKED	DCD	APP. DATE 08/28/06

gai consultants
 618 East South Street
 Suite 200
 Tallahassee, FL 32301
 907-432-6330

SHEET: 2
 PROJECT NUMBER: A060352.00
 TITLE: NAME: 2006-106.dwg